

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
ADMINISTRATIVE GOVERNING BOARD
OF THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

No 02 of 2018

In re: Amendment Philadelphia Criminal Rule *528. Ten Percent (10%) Deposit of Bail

ORDER

AND now, this 10th day of October, 2018, upon recommendation of the Philadelphia County Criminal Justice Advisory Board (“CJAB”) that the First Judicial District of Pennsylvania consider amending Philadelphia Criminal Rule *528, which currently authorizes the retention of 30% of cash bail posted to secure a defendant’s release from custody pending the full and final disposition of the defendant’s case, and upon consideration of best practices reviewed by the CJAB and the First Judicial District in connection with criminal justice reform including in their involvement in the management of the MacArthur Foundation grant awarded to the City of Philadelphia and interaction with City Council’s Special Committee on Criminal Justice Reform, the Court concludes that the interests of justice would be best served if the entire amount of cash bail deposited to secure the defendant’s release were to be refunded in those cases where the Defendant fully complied with the principal purpose of bail: to appear as required at all times for all court hearings and other events until full and final disposition of defendant’s case,

NOW, therefore, it is hereby ORDERED and DECREED that Philadelphia Rule of Criminal Procedure *528 is amended as attached. The amendment authorizes the return of the entire amount deposited, pursuant and subject to Pa.R.Crim.P. 535, provided that the Defendant has not violated the condition of the bail bond which requires the Defendant to appear as required at all times for all court hearings and other events until full and final disposition of the case.

IT IS further ORDERED and DECREED that should the Defendant fail to appear as required by the bail bond, the amount deposited shall be forfeited pursuant to Pa.R.Crim.P. 536 and the forfeiture shall only be reduced or vacated pursuant to Philadelphia Criminal Rule *536 and other applicable local rules.

This Order is effective as to all cases which are fully and finally disposed as of today’s date and thereafter.

As required by Pa.R.J.A. 103(d), this Administrative Order and the proposed local rule were submitted to the Supreme Court of Pennsylvania Criminal Procedural Rules Committee for review and written notification has been received from the Rules Committee certifying that the proposed local rule is not inconsistent with any general rule of the Supreme Court. This Administrative Order and the attached local rule shall be filed with the Office of Judicial Records (formerly the *Prothonotary, Clerk of Courts and Clerk of Quarter Sessions*) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the attached local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order and local rule shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://courts.phila.gov>, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rule shall also be published in *The Legal Intelligencer* and will be submitted to *American Lawyer Media, Jenkins Memorial Law Library*, and the Law Library for the First Judicial District.

BY THE COURT:

/s/ Sheila Woods-Skipper

Honorable Sheila Woods-Skipper
Chair, Administrative Governing Board
First Judicial District of Pennsylvania
President Judge, Court of Common Pleas,
Philadelphia County

Note: Deleted text is in ~~strikethrough bold font~~; new text is in CAPS bolded and underlined

Amendments to Philadelphia Criminal Rule *528. Ten Percent (10%) Deposit of Bail

Rule *528. Ten Percent (10%) Deposit of Bail.

(A) Any defendant who has been properly granted bail may obtain his release from custody as provided herein by depositing with ~~the issuing authority or clerk of Court~~ THE OFFICE OF JUDICIAL RECORDS a sum of money equal to ten percent (10%) of the full amount of the bail, but in no event less than twenty-five dollars (\$25), and by executing a bail ~~undertaking~~ BOND. A private individual who is not a surety ~~or fidelity~~ company or ~~professional~~ bail bondsman ~~or agent thereof~~ may act as a third-party surety and execute the aforementioned bail ~~undertaking~~ BOND on behalf of the defendant. Except as provided in this section, no other individual or business entity may act as a third-party surety UNLESS APPROVED BY THE ADMINISTRATIVE GOVERNING BOARD OF THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA UPON FILING A PETITION PURSUANT TO Pa.R.Crim.P. 531 AND APPLICABLE LOCAL RULES OF COURT.

(B) With respect to deposited bail pursuant to subsection (A), the Court is empowered ~~by General Court Regulation~~ to designate a minimum sum of money which shall be retained by the Court. ~~This sum shall be considered earned at the time the bail undertaking is executed.~~

~~(C) Upon compliance with all the provisions of this Rule, the defendant shall be released from custody imposed in the criminal charge on which he has made bail.~~

(C) SHOULD THE DEFENDANT FAIL TO APPEAR AS REQUIRED BY THE BAIL BOND, AND NOT APPEAR IN COURT WITHIN NINETY (90) DAYS AFTER NOTICE OF THE FORFEITURE, AS PROVIDED BY Pa.R.Crim.P. 536 (A)(2)(c), THE AMOUNT DEPOSITED SHALL BE FORFEITED AND A JUDGMENT WILL BE ENTERED FOR THE BALANCE OF THE TOTAL BAIL ORDERED. FORFEITURES AND BAIL JUDGMENTS SHALL ONLY BE REDUCED OR VACATED PURSUANT TO PHILADELPHIA CRIMINAL RULE *536 AND OTHER APPLICABLE LOCAL RULES OF COURT.

(D) Upon the full and final disposition of the criminal case in which *defendant* BAIL has BEEN deposited; ~~bail in accordance with this Rule, the bail deposit, less the retention amounts provided in subsection (B), shall be refunded to the individual who originally paid the deposit. To effect this return, the issuing authority or clerk of Court shall promptly notify the aforementioned individual of the full and final disposition of the case and include instructions for obtaining the return of the deposit. Said notice may be in writing, sent to the last recorded address of the party who deposited bail. Any deposited funds not claimed within 180 days from the aforementioned notice shall be deemed forfeited to the Court.~~

- (1) THE BAIL DEPOSIT SHALL BE RETURNED IN FULL, AS PROVIDED IN Pa.R.Crim.P. 535, IF THE DEFENDANT HAS APPEARED AS REQUIRED AT ALL TIMES FOR ALL COURT HEARINGS AND OTHER EVENTS AS REQUIRED BY THE BAIL BOND, THE BAIL DEPOSIT; OR
- (2) THE BAIL DEPOSIT, LESS THE RETENTION AMOUNT AUTHORIZED PURSUANT TO SUBSECTION (B), SHALL BE RETURNED IF THE DEFENDANT HAS NOT APPEARED AS REQUIRED AT ALL TIMES FOR ALL COURT HEARINGS AND OTHER EVENTS AS REQUIRED BY THE BAIL BOND.

(E) A defendant, or a third party surety as defined in this Rule, may post realty as security for bail. In this event, an encumbrance shall be created immediately on such realty before the defendant may be admitted to bail. The said encumbrance shall remain in force until the case is disposed as provided in subsection (D).

Realty posted as security for bail shall be valued in an amount equal to the assessed value of the realty used for determining tax liability on the realty. Only realty with an unencumbered assessed value equal to, or in excess of, the full amount of bail shall be accepted as security for the bail.

Comment

SUBSECTION (A) AUTHORIZES POSTING CASH BAIL WITH THE OFFICE OF JUDICIAL RECORDS.

SUBSECTION (B) AUTHORIZES THE COURT TO DESIGNATE, CONSISTENT WITH PA.R.Crim.P. 535 (D), A FEE TO ADMINISTER THE CASH BAIL PROGRAM. The *minimum* retention figures designated ~~pursuant to subsection (B)~~ **BY THE COURT** are ~~a fee equal to~~ 30% (thirty percent) of the amount of the deposit or 3% (three percent) of the total amount of the bail. However, the **COURT HAS DIRECTED THAT THE** maximum amount retained shall not exceed \$1,500 regardless of the total amount of the bail or the amount of the cash deposit, **AND THAT ~~It~~ IN** no event shall the amount retained by the Court be less than \$10 (ten dollars).

SUBSECTION (C) PROVIDES GUIDANCE REGARDING THE FORFEITURE OF THE BAIL DEPOSIT AND ENTRY OF A JUDGMENT FOR THE BALANCE OF THE BAIL ORDERED AS WELL AS REDUCTION AND VACATION OF SAME.

SUBSECTION (D) PROVIDES THAT THE ENTIRE BAIL DEPOSIT WILL BE RETURNED IF THE DEFENDANT APPEARS FOR ALL COURT HEARINGS AND EVENTS, AND THAT THE RETENTION AMOUNT ESTABLISHED IN SUBSECTION (B) SHALL BE RETAINED IF THE DEFENDANT DOES NOT APPEAR AT AS REQUIRED.

SUBSECTION (E) CONTROLS REAL ESTATE POSTED AS BAIL.

Note: Star Rule *4008.1, adopted May 17, 1973; Star Rule *4009.1, adopted May 17, 1973, and Star Rule *4010(c), adopted May 20, 1971. General Court Regulation 73-5, July 2, 1973; comment amended by General Court Regulation 80-13, effective July 1, 1980; comment amended by General Court Regulation 88-4; effective June 1, 1988.

Former Phila. Crim. R. 506. Comment amended and rule renumbered on April 20, 2012 by Administrative Governing Board Order 03 of 2012. AMENDED October 10, 2018, EFFECTIVE IMMEDIATELY.

Proposed Amendments to Philadelphia Criminal Rule *528. Ten Percent (10%) Deposit of Bail
CLEAN VERSION

Rule *528. Ten Percent (10%) Deposit of Bail.

(A) Any defendant who has been properly granted bail may obtain his release from custody as provided herein by depositing with the Office of Judicial Records a sum of money equal to ten percent (10%) of the full amount of the bail, but in no event less than twenty-five dollars (\$25), and by executing a bail bond. A private individual who is not a surety company or bail bondsman may act as a third-party surety and execute the aforementioned bail bond on behalf of the defendant. Except as provided in this section, no other individual or business entity may act as a third-party surety unless approved by the Administrative Governing Board of the First Judicial District of Pennsylvania upon filing a petition pursuant to Pa.R.Crim.P. 531 and applicable local rules of court.

(B) With respect to deposited bail pursuant to subsection (A), the Court is empowered to designate a minimum sum of money which shall be retained by the Court.

(C) Should the defendant fail to appear as required by the bail bond, and not appear in court within ninety (90) days after notice of the forfeiture, as provided by Pa.R.Crim.P. 536 (A)(2)(c), the amount deposited shall be forfeited and a judgment will be entered for the balance of the total bail ordered. Forfeitures and bail judgments shall only be reduced or vacated pursuant to Philadelphia Criminal Rule *536 and other applicable local rules of court.

(D) Upon the full and final disposition of the criminal case in which bail has been deposited:

- (1) the bail deposit shall be returned in full, as provided in Pa.R.Crim.P. 535, if the defendant has appeared as required at all times for all court hearings and other events as required by the bail bond; or
- (2) the bail deposit, less the retention amount authorized pursuant to subsection (B), shall be returned if the defendant has not appeared as required at all times for all court hearings and other events as required by the bail bond.

(E) A defendant or a third party surety as defined in this rule may post realty as security for bail. In this event, an encumbrance shall be created immediately on such realty before the defendant may be admitted to bail. The said encumbrance shall remain in force until the case is disposed as provided in subsection (D).

Realty posted as security for bail shall be valued in an amount equal to the assessed value of the realty used for determining tax liability on the realty. Only realty with an unencumbered assessed value equal to, or in excess of, the full amount of bail shall be accepted as security for the bail.

Comment

Subsection (A) authorizes posting cash bail with the Office of Judicial Records.

Subsection (B) authorizes the Court to designate, consistent with Pa.R.Crim.P. 535 (D), the fee to administer the cash bail program. The retention figures designated by the Court are 30% (thirty percent) of the amount of the deposit or 3% (three percent) of the total amount of the bail. However, the Court has directed that the maximum amount retained shall not exceed \$1,500 regardless of the total amount of the bail or the amount of the cash deposit, and that in no event shall the amount retained by the Court be less than \$10 (ten dollars).

Subsection (C) provides guidance regarding the forfeiture of the bail deposit and entry of a judgment for the balance of the bail ordered as well as reduction and vacation of same.

Subsection (D) provides that the entire bail deposit will be returned if the defendant appears for all court hearings and events, and that the retention amount established in subsection (B) shall be retained if the defendant does not appear as required.

Subsection (E) controls real estate posted as bail.

Note: Star Rule *4008.1, adopted May 17, 1973; Star Rule *4009.1, adopted May 17, 1973, and Star Rule *4010(c), adopted May 20, 1971. General Court Regulation 73-5, July 2, 1973; comment amended by General Court Regulation 80-13, effective July 1, 1980; comment amended by General Court Regulation 88-4; effective June 1, 1988. *Former Phila. Crim. R. 506. Comment amended and rule renumbered on April 20, 2012 by Administrative Governing Board Order 03 of 2012. Amended October 10, 2018, effective immediately.*